L. BARTILSON F 213 953-3351 J F. GREENE 258-0360 J
A. WILSON F 954-0938 J F 926-5318

LAW & MOTION, CIVIL CALENDAR

RULINGS

TIME: 9:00 DATE: OCTOBER 6, 1995 DEPT: 1

JUDGE: GARY W. THOMAS REPORTER: E. PASSARIS CLERK: J. BANKSON

CASE NO: 157680 TITLE OF ACTION: CHURCH SCIENTOLOGY V. ARMSTRONG

PLAINTIFF'S MOTIONS FOR SUMMARY ADJUDICATION ARE GRANTED.

AS TO THE THIRTEENTH, SIXTEENTH, SEVENTEENTH AND NINETEENTH CAUSES OF ACTION, PLAINTIFF HAS MET ITS BURDEN OF SHOWING THAT DEFENDANT BREACHED THE SETTLEMENT AGREEMENT AND THAT IT IS ENTITLED TO LIQUIDATED DAMAGES OF $50,000 FOR EACH BREACH. DEFENDANT HAS FAILED TO RAISE A TRIABLE ISSUE AS TO ANY OF THE CAUSES OF ACTION, AS FOLLOWS:

INVALIDITY OF LIQUIDATED DAMAGES PROVISION: DEFENDANT'S EVIDENCE REGARDING HIS ATTORNEYS' FAILURE TO REPRESENT HIS INTERESTS (SEE FACTS 43 AND 68) IS HEARSAY AND/OR NOT BASED ON PERSONAL KNOWLEDGE. THE OPINION OF DEFENDANT'S ATTORNEY AS TO THE VALIDITY OF THE PROVISION (SEE, E.G., FACTS 52-54, 57-60) IS IRRELEVANT AND HEARSAY. THE FACT THAT TWO OTHER CLIENTS SIGNED A SETTLEMENT AGREEMENT CONTAINING THE SAME LIQUIDATED DAMAGES AMOUNT (SEE FACTS 55-56 AND 63-64) DOES NOT RAISE AN INFERENCE THAT THE PROVISION WAS UNREASONABLE. DEFENDANT'S EVIDENCE IS INSUFFICIENT TO RAISE A REASONABLE INFERENCE OF UNEQUAL BARGAINING POWER (NO PERSONAL KNOWLEDGE SHOWN THAT PLAINTIFF, AS OPPOSED TO FLYNN, POSITIONED DEFENDANT AS A "DEAL BREAKER"; FLYNN'S STATEMENTS HEARSAY; NO PERSONAL KNOWLEDGE SHOWN OF PLAINTIFF'S WEALTH; WEALTH ALONE DOES NOT RAISE INFERENCE OF UNEQUAL BARGAINING POWER SINCE NO SHOWING DEFENDANT DESPERATE FOR MONEY AND HAD TO ACCEPT ON PLAINTIFF'S TERMS). DEFENDANT'S EVIDENCE DOES NOT RAISE AN INFERENCE THAT PLAINTIFF'S CALCULATION IS "UNFATHOMABLE" (FOURTEENTH CAUSE OF ACTION SEEKS $50,000 FOR EACH OF 18 LETTERS; NINETEENTH CAUSE OF ACTION IS BASED ONLY ON DECLARATIONS, NOT ON OTHER CONTACTS BETWEEN DEFENDANT AND ATTORNEY/OTHER CLIENTS). DEFENDANT FAILS TO ESTABLISH HOW HE KNOWS PLAINTIFF HAD NOT BEEN INJURED BY HIS STATEMENTS AT THE TIME OF SETTLEMENT.

DURESS: FLYNN'S STATEMENTS TO DEFENDANT ARE HEARSAY. (SEE, E.G., D'S FACTS 1C AND 1D.) FURTHER DEFENDANT HAS NOT SHOWN THAT PLAINTIFF WAS AWARE OF FLYNN'S PURPORTED DURESS OF DEFENDANT. (SEE *LEEPER V. BELTRAMI* (1959) 53 CAL.2D 195, 206.) CONTRARY TO DEFENDANT'S STATEMENT ABOUT DURESS, "CAREFUL WEIGHING OF OPTIONS" IS COMPLETELY INCONSISTENT WITH AN ABSENCE "OF THE FREE EXERCISE OF HIS WILL POWER" OR HIS HAVING "NO REASONABLE ALTERNATIVE TO SUCCUMBING." (SEE *PHILIPPINE EXPERT & FOREIGN LOAN GUARANTEE CORP. V. CHUIDIAN* (1990) 218 CAL.APP.3D 1058, 1078; *IN RE MARRIAGE OF BALTINS* (1989) 212 CAL.APP.3D 66, 84.)

(CONTINUED TO PAGE 12-A-1.)

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FRAUD: FLYNN'S STATEMENTS TO DEFENDANT (SEE FACT 78) ARE HEARSAY. THE COURT FINDS THAT THE PORTIONS OF THE AGREEMENT CITED BY DEFENDANT (SEE FACTS 79 AND 80) DO NOT ESTABLISH A MUTUAL CONFIDENTIALITY REQUIREMENT. PARAGRAPH 7(I) ONLY PROHIBITS THE PARTIES FROM DISCLOSING INFORMATION IN LITIGATION BETWEEN THE PARTIES; PARAGRAPH 18(D) ONLY PROHIBITS DISCLOSURE OF THE TERMS OF THE SETTLEMENT; DEFENDANT HAS NOT SHOWN THAT PLAINTIFF DID EITHER OF THOSE THINGS. FURTHER, "[S]OMETHING MORE THAN NONPERFORMANCE IS REQUIRED TO PROVE THE DEFENDANT'S INTENTION NOT TO PERFORM HIS PROMISE." (*TENZER V. SUPERSCOPE, INC.* (1985) 39 CAL.3D 18, 30-31.)

NO SPECIFIC PERFORMANCE, BREACH OF EXPRESS AND IMPLIED COVENANT: DEFENDANT RELIES ON THE PURPORTED MUTUALITY REQUIREMENT, WHICH HE HAS FAILED TO ESTABLISH.

OBSTRUCTION OF JUSTICE: THIS ARGUMENT WAS REJECTED BY THE COURT IN CONNECTION WITH PLAINTIFF S PREVIOUS MOTION FOR SUMMARY ADJUDICATION. (SEE 2/22/95 ORDER AT ¶6.)

FIRST AMENDMENT: FIRST AMENDMENT RIGHTS MAY BE WAIVED BY CONTRACT. (SEE *ITT TELECOM PRODUCTS CORP. V. DOOLEY* (1989) 214 CAL.APP.3D 307, 319.)

AS TO THE TWENTIETH CAUSE OF ACTION, THE COURT WILL NOT ORDER DEFENDANT TO REMOVE INFORMATION FROM FACTNET. PLAINTIFF'S OWN EVIDENCE SHOWS THAT DEFENDANT IS NO LONGER A DIRECTOR OR OFFICER OF FACTNET (SEE P'S EX. 1CCCC AT 955:1-4), AND PLAINTIFF SETS FORTH NO FACTS OR EVIDENCE SHOWING THAT DEFENDANT HAS THE PRESENT ABILITY TO REMOVE INFORMATION FROM FACTNET. IN ADDITION, PLAINTIFF HAS NOT ESTABLISHED THAT ALL OF THE MATERIALS IN FACTNET'S POSSESSION WERE SUPPLIED BY DEFENDANT. IN ALL OTHER RESPECTS, THE MOTION AS TO THE TWENTIETH CAUSE OF ACTION IS GRANTED.

THE PLAINTIFF HAS ASKED THAT THE EXHIBITS WHICH WERE PREVIOUSLY ORDERED SEALED BE STRICKEN AS THEY ARE TRADE SECRETS, IRRELEVANT TO THIS MOTION. THIS REQUEST IS GRANTED. THEY ARE NOT RELEVANT. FURTHER, THEY WERE FILED BY MR. ARMSTRONG IN PRO PER WHEN HE IS, IN FACT, REPRESENTED BY COUNSEL.